

**Supplemental Letter of Findings: 01-20181540
Individual Income Tax
For the Year 2013**

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Supplemental Letter of Findings.

HOLDING

Despite the fact that Individual claimed an Indiana Homestead Credit during the year under consideration, the Department agreed that Individual presented "substantial contrary" evidence that, for purposes of Indiana's individual income tax, Individual abandoned his Indiana domicile and established a new Michigan domicile.

ISSUE

I. Indiana Individual Income Tax - Residency.

Authority: IC § 6-1.1-12-37; IC § 6-8.1-5-1(c); [45 IAC 3.1-1-22.5](#); [45 IAC 3.1-1-22.5\(c\)](#); Letter of Findings 01-20180728, April 19, 2018.

Taxpayer again challenges the Department's assessment of additional 2013 individual income tax and the Department's previous administrative decision denying Taxpayer's original protest.

STATEMENT OF FACTS

Taxpayer is an individual who previously lived in and filed Indiana income tax returns. Taxpayer now lives in and has a Michigan mailing address. The Indiana Department of Revenue ("Department") sent Taxpayer a June 2017 letter explaining that "[b]ased on information reported to the Indiana Department of Revenue, you may have unreported income for tax year 2013." Taxpayer was directed to either file a 2013 Indiana income tax return, send a copy of his previously filed 2013 Indiana return, or "send a letter that explains why you were not required to file a 2013 Indiana income tax return."

Taxpayer responded that he was not an Indiana resident during 2013 and that he had been "strong armed" by the Department into filing 2011 and 2012 Indiana income tax returns.

The Department forwarded Taxpayer a second letter dated December 2017 stating that he "must file an Indiana Individual Income Tax Return Form IT-40 reporting your Indiana-sourced income" The letter stated Taxpayer was required to file the return because he received Indiana sourced income and because he was an Indiana resident.

[Y]ou established your domicile in Indiana before [2013] by taking the Homestead Exemption deduction on your [Indiana] property. In order to receive a homestead deduction, the property must be the individual's "principal place of residence." "Principal place of residence" means an individual's true, fixed, permanent home to which the individual has the intention of returning after an absence pursuant to [50 IAC 24-2-5](#).

The Department issued Taxpayer a notice of "proposed assessment" in February 2018. Subsequently, Taxpayer submitted a protest challenging the assessment. Taxpayer again explained that he did not live in Indiana during 2013, that he lived in Michigan during all of 2013, and that he paid 2013 Michigan state income taxes.

An administrative hearing was conducted by telephone during which Taxpayer's representative explained the basis for the protest. A Letter of Findings was issued in April 2018. The Letter of Findings held that Taxpayer failed to meet his burden of establishing that he had abandoned his Indiana domicile and moved to and established Michigan as his new, permanent home.

Taxpayer disagreed with the April 2018 Letter of Findings and requested a rehearing. That rehearing request was

granted. Taxpayer's representative again explained the basis for the protest and provided additional documentation. This Supplemental Letter of Findings results.

I. Indiana Individual Income Tax - Residency.

DISCUSSION

On rehearing, the issues remain the same; has Taxpayer established that he was not an Indiana resident during 2013 and was not required to report his income and file an Indiana individual income tax return? Has Taxpayer established the original assessment was wrong because he abandoned his Indiana domicile in order to establish a new, permanent residence in Michigan?

Taxpayer points out to what he believes were errors contained in the Department's April 2018 decision (Letter of Findings 01-20180728, April 19, 2018 (20180627 Ind. Reg. 045180259NRA)). Taxpayer points out that he was not employed in Indiana during 2013, that he is "permanently disabled," and that he received only "Social Security Disability and Pension benefits" that year. In support, Taxpayer provided a copy of a 2011 "Social Security Disability Award Letter," a 2013 "Medicare Award Letter," a "handicap parking permit issued by the state of Michigan," and his 2013 federal tax return.

Taxpayer also provided evidence that the businesses from which he received Indiana source income were closed in 2013. Taxpayer provided copies of the companies' 2008 and 2009 administrative dissolution documents and the companies' 2008 and 2010 final Indiana income tax returns. As Taxpayer explains, "Neither corporation existed during tax year 2013, having been administratively dissolved several years prior."

In addition, Taxpayer provided additional evidence purporting to buttress his claims that his 2013 true residence was in Michigan. Taxpayer provided 2013 Michigan utility bills, insurance policies on his Michigan home, and other documents indicating that vendors provided services at his Michigan home.

Taxpayer points to a statement contained in the Letter of Findings addressing his dual driver's licenses.

Taxpayer admits to having a then-current Indiana driver's license but indicates that he attempted to surrender that license. Taxpayer explains that when he attempted to do so, he was told he could only surrender the license if he admitted he was no longer competent to drive - an admission he was unwilling to make.

As to his Michigan and Indiana driver's licenses, Taxpayer explained that he was issued Michigan driver's licenses in 2009 and 2013. Taxpayer provided a copy of his Indiana driver's license with, as he explains "holes punched through it to indicate that it was voided by the Michigan Secretary of State . . . upon his application for a Michigan driver's license in 2009." Taxpayer states that it was Indiana's responsibility to void his Indiana driver's license once he was granted the Michigan license.

Taxpayer further states that the April 2018 Letter of Findings erred in describing his Michigan home as a "lakefront cottage." To that end, Taxpayer provided a satellite photo of the property along with a copy of a realtor's property description dated the year Taxpayer acquired the property.

Taxpayer concludes that the additional evidence along with the information provided during the original hearing is sufficient to establish that - for purposes of Indiana's individual income tax - he was not an Indiana resident during 2013.

This Supplemental Letter of Findings incorporates by reference the relevant statement and explanation of law as set out in Letter of Findings 01-20180728 including the requirement that - as with any assessment - under IC § 6-8.1-5-1(c) Taxpayer has the burden of establishing that the assessment was wrong.

Given the cumulative weight of the evidence Taxpayer provided during the original hearing and the information provided subsequently, the Department is prepared to agree that, pursuant to [45 IAC 3.1-1-22.5](#), Taxpayer abandoned his Indiana domicile and established a domicile in Michigan. Taxpayer has rebutted by "substantial contrary evidence," as required under [45 IAC 3.1-1-22.5\(c\)](#), the Department's original presumption based on his claim to the Indiana homestead credit.

Nonetheless, Taxpayer is reminded that Indiana law, IC § 6-1.1-12-37(f), requires that Taxpayer notify the auditor of the Indiana county in which he claimed the benefit that he is no longer qualified for the homestead deduction.

FINDING

Taxpayer's protest is sustained.

July 6, 2018

Posted: 09/26/2018 by Legislative Services Agency

An [html](#) version of this document.